

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Timothy Wayne Foster,	)	C/A No. 9:17-cv-2975-DCC
	)	
Plaintiff,	)	
	)	
v.	)	
	)	ORDER
Major Joseph Curry, Capt. Carol Scott, Ofc.	)	
Marie Smith,	)	
	)	
Defendants.	)	

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This matter is before the Court on Plaintiff's Complaint alleging violations of civil rights pursuant to 42 U.S.C. § 1983. ECF No. 1. Defendant Major Joseph Curry filed a Motion to Dismiss for lack of jurisdiction. ECF No. 28. A *Roseboro* order was entered by the Court and mailed to Plaintiff, advising Plaintiff of the importance of a dispositive motion and the need for Plaintiff to file an adequate response. ECF No. 30. Plaintiff filed two Responses in Opposition to the Motion to Dismiss. ECF Nos. 38, 39.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report"). On July 12, 2018, the Magistrate Judge issued a Report recommending that Defendant Curry's Motion to Dismiss be granted. ECF No. 41. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has filed no objections, and the time to do so has passed.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

After considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the Report’s recommendation that Defendant Curry’s Motion to Dismiss be granted. Accordingly, the Court adopts the Report by reference in this Order. The Motion to Dismiss [28] is **GRANTED** and Defendant Major Joseph Curry is dismissed from this action without prejudice.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.  
United States District Judge

August 6, 2018  
Spartanburg, South Carolina

### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.